

A N S W E R
TO THE
CONSIDERATIONS
ON THE ESTABLISHMENT OF
A REGENCY.

L O N D O N :

PRINTED FOR J. DEBRETT, OPPOSITE BURLINGTON,
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A. N. S. W. E. R.

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CONSIDERATIONS

ON THE RESTAURANT OF

A REGENCY.

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PRINTED FOR J. BARNES, STATIONER, BUNNINGS-ROAD.

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W. H. BARNES, STATIONER, BUNNINGS-ROAD.

A N S W E R, &c.

THE author of the Considerations on the Establishment of a Regency, if his object had really been that which he professes in his 52d page, namely, “to contribute to settle, on constitutional principles, a transaction which is interesting to our present happiness,” should have first well informed himself what the principles of the constitution are, to which the present state of affairs are applicable, and well studied those precedents that bear any analogy to the existing situation, or to that constitution which he admits (page 5,) “has been changed by the revolution of so many ages.” That the author has not qualified himself for the task he has undertaken, must be evident

to all those who have read his pamphlet, and looked over the precedents he relies upon ; unless they suppose, that not his ignorance, but his interest, has tempted him to endeavour to mislead the public. I shall therefore endeavour to point out the fallacy of his statement, and of the arguments he makes use of in support of his doctrine, and give such reasons as have convinced me that the principles he lays down as a basis on which to establish a temporary government on constitutional principles, are not only not sound and constitutional, but grounded on the worst and most dangerous policy, and unsupported by any precedents applicable to the present case ; and that the system of government, if practicable, is not necessary to secure those plausible ends which he endeavours to persuade the public are attainable by no other means.

The professed object of the pamphlet is, to secure the rights of the crown from imaginary dangers arising from the necessary transfer of its authority to a Regent, during the melancholy incapacity of its owner to execute



execute his royal functions, and to insinuate to the public, that this object cannot be secured if the whole authority is transferred. The author in his argument supposes (what is not true) that the two houses, in their present crippled state, without a head, or vital principle, are a perfect and complete legislature, competent to make new provisions, better fitted to the exigencies of the moment than the common law of the land has provided; and he supposes, that in the case of a defect in the royal capacity, short of death, the whole kingly power falls immediately to the people; and by a singular application of the laws of falling bodies, rebounds into the hands of the two remaining branches of a maimed legislature; for in page 10, he says, that "it remains with the people to exercise this power which they have *reserved*;" and then ingeniously finds, that though the people had not delegated this power to their constituents, from whom it passes to them by reservation, yet their constituents alone, *from* whom it is reserved, can exercise this power, and not

the persons who have reserved it;—but the premises are false, and his conclusion ridiculous and unlogical. He then proceeds boldly to assert, that “ the degree of authority which it may be necessary to grant, cannot be claimed as a right, but must be conferred as a trust;” and grounds this doctrine on the following arguments, that “ during the life of a British king, no man can claim an hereditary right to the exercise of royal power—*nemo est hæres viventis* ;” which he says “ is equally applicable to every description of right and property;” and he endeavours to fortify his doctrine, by a reference to the revolution, and other precedents in more ancient times. In answer to this assertion I venture to assert, not only that a claim may be made to the exercise of royal authority during the temporary incapacity of the legal owner, but that the peace, tranquillity, and unity of this empire, depends on the maintenance and acknowledgement of that claim. *Nemo est hæres viventis*—is certainly a maxim of law, though not applicable to a king, who, by as

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old a maxim of the same law, never dies; the maxim thus applied, is certainly out of its place; but even in its application to private property, it is not so inflexible a rule as to admit no exception; for a son becomes heir to his living father, who renounces worldly affairs by monastic vows and engagements. How far, if released from those vows and engagements, he could resume his interest in his transferred property, is immaterial; certain it is, that during his legal incapacity, he is dead in law; and his heir or executor may maintain actions as such, even during his natural life. This formidable argument, therefore, has no ground to rest upon; but it would even be defective in its application, if it had been unexceptionably true as a maxim; for in the present case, there is no question of succession as heir to the full indefeasible right to the *crown*, but during its incapacity, to the full exercise of the authority belonging to it for the public good, not given (in the phrase of the author, page 8,) “ for the advantage of any individual family, “ however entitled to our gratitude and veneration.”

“neration.” It is a right inherent in the prince of Wales, of full age, as guardian apparent, as well as heir apparent to the kingdom, more interested than any person to preserve the unity of empire, and the integrity of the constitution; to see that no new forms of government be introduced by interested men, to change, or discredit, and weaken the reverence due to the established monarchical form of government, and make elective the authority of an hereditary monarchy, which the author of the Considerations flatters himself he shall persuade the public becomes naturally elective, on the principles of hereditary succession. The author, well knowing the almost religious veneration the public justly have for the principles of the revolution, wishes to persuade them, that there is some analogy between the principles of the revolution, and the principles he has laid down: to prove any analogy between the situation and conduct of the convention of that time, and of the present, he must find that the situation of James II. who had broke the original compact,

compact, and by acts of despotism forfeited his crown, which by the forfeiture became no longer descendable, but was declared completely vacant, was similar to the situation of a monarch who has respected the rights of his people, but is for the present rendered unable, by the melancholy state of his health, from exercising the functions of his royal office; he must likewise show that a prince of Wales, of full age, undisputed heir to the crown, is to be regarded as a child, called by some, prince of Wales, and whose royal birth was denied by the greatest part of the kingdom. It is in vain to attempt to assimilate the situations, and it will be equally in vain to search for principles in the revolution, which can support the doctrine of the author of the *Considerations*. Every principle deducible from that period, which can have any relation to the present situation, militates against the author's positions. The opinions of both parties at that time, contending with the utmost zeal, for, and against, the declaration of the *vacancy* of the throne, proves the acknowledged maxim, that

that unless the throne had been forfeited completely, and declared perfectly vacant, they could not, *as a convention*, alter the hereditary succession. Hence arose the great earnestness on each side,—the one to maintain, the other to get rid of the declaration of the *vacancy of the throne*; both agreeing, that king James had lost his personal right to the exercise of his authority; but disagreeing in the terms in which it should be expressed, because their concealed views were different;—the one party determined to involve in the father's forfeiture the doubtful heir, who would add to the dangers of a disputed birth, those arising from a popish education,—the other wishing to adhere to the lineal succession, and to enter into the examination of the doubtful birth; though the subtlety with which they urged on the one side, and evaded on the other, the open avowal of their intentions, this maxim appears manifest, that the simple removal or suspension of the father's authority, could not bar the son's right; and that nothing vested a power to supply the deserted throne

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by an election, but its total *vacancy*; those who maintained the vacancy, denied that they made the crown elective, by filling a throne fundamentally vacant, which must remain vacant, if no election, *pro hac vice*, took place; but they professed neither to have the power, nor wish, to alter the hereditary monarchical constitution of the land; nor did they profess to abridge, or alter the legal powers of the crown; they did not indulge their imaginations, in forming new systems of government; they supplied the throne with no novel sceptre, but by a King, known, defined, and limited by the antient laws of the land. They found the first and most important branch of the legislature abdicated; they found themselves thereby maimed, and unfit for the execution of their trust; they established and confirmed the lost existence of the authority of the crown, in the person of an elected king: thus far, and no further, could they act as a convention, and no further did they attempt to

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act. The king so elected, became a king *de facto*; and the act of Henry VII. gave him power and authority; it required a subsequent act of the legislature to limit the succession in the manner desired, without which it was known, that the wishes of the people, in the limitation, could not have the weight of law. This I take to be the clear state of the principles of the Revolution, as far as they are applicable to the present case; in many points they cannot be applied; the throne cannot now, as then, be declared vacant; for there is no forfeiture. Upon the principles of the Revolution, *this convention* can only find, as a jury, who the person is who legally fills the place, during the melancholy occasion that stagnates the vital energy of the constitution; they must fill it according to the law of the land, which nothing but a full parliament can alter; they cannot indulge their fancy with idle dreams of Utopian government; nor assume a legislative power, to undermine the prerogative of the crown, by declaring, with the Author of the Considerations,

tions, that all the prerogatives of the crown, and kingly authority, are not necessary for the good government of the land; but may, by its abuse, be of the utmost prejudice, and, therefore ought not to exist; for if they do not exist necessarily for the good of the whole community, they ought not to exist either in King or Regent. I am founded in this assertion, by the author's own confession, p. 8. that the monarchy of "these
 " realms has been established amongst us,
 " not for the advantage of any individual
 " family, however entitled to our grati-
 " tude and veneration, but for the benefit
 " of the nation, and for the security and
 " happiness of millions."

The precedents of the 1st of Henry VIth. referred to by the author, and to be found in the Rolls of Parliament, are stated so falsely, that on the simple examination, the motives of the author must immediately appear, not to arise from that affected zeal he professes, to secure his sovereign from imagined dangers of his own creation, but from some apprehension he may entertain for his

own situation, or those of his employers. To establish his principle, that no claim can be legally made to the exercise of royal power, he states a claim to have been made by "one of the relations of the King to the Regency, in the 1st of Henry VIth. during his minority," and that "this claim was formally examined and disallowed by parliament," who, in the words of parliament, "after long and great deliberations and advice, searching precedents of the government of the land in similar times and cases, when the kings of this land have been of tender age, and taking information of the laws of the land, from such persons as were learned therein, finally found the said desire not grounded in precedent, nor in the law of the land." A more impudent attempt to mislead the public, by a false statement, cannot be found.

Henry the Vth, on his death bed, desired, that his elder brother, "the duke of Bedford, should take upon him the administration of the affairs of France;" and
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“ his younger brother, the duke of Gloucester, be *Protector* of England, during his son's minority.” Vide Rapin.

After the king's death, a parliament was summoned, by writ, dated September 29, 1422, in the young king's name; and on the day of its meeting, a commission, directed to the duke of Gloucester, to empower him to hold the parliament, in the king's name, was read in the presence of the duke. The duke of Gloucester, at this parliament, claimed by his birth, and the late king's will, to have the government of the land; the parliament were of opinion, that the king could not dispose of the government of the land beyond his life; nor *alter or change the government, without the consent of the three estates.* Vide Rolls of Parliament, Vol. iv. p. 326. and they were of opinion, that the younger uncle, the duke of Gloucester, had no right; but they confirmed the right of the elder uncle, the duke of Bedford, by declaring him Protector; and, in his absence, that the duke of Gloucester should be Protector, who took upon him the said dignity,

dignity, under protestation that it should be no prejudice to the *right* of his brother. Vide Parliamentary History, Vol. ii. p. 178. Thus stands this rejected right referred to, and mistated by the author; and proves to be, not a claim of right rejected, as admitting no right, but a right admitted, by parliament, to exist in the nearer relation to the crown, the duke of Bedford. This right proved so strong, that it overruled the inclination and dying request of a popular and beloved king. This also was an act of a full parliament, not a convention, which has no authority to enact laws. The parliament was held by a commission, under the great seal, the age of the king being at that period no obstacle to many acts of royal authority, in which "the laws changed" (as the Author of the Considerations says) "by the revolution of so many ages," have since limited the activity of a minor king. "The author says, they gave this rejected claimant a more limited power, subject to the controul of a council, by a name conceived to be of less dignity than Regent."

“ gent.” The fact is, the parliament, and not the convention, declared him Protector; an office not only of less dignity, but less power by law; for a Protector could not summon, hold, or dissolve parliament, to which the minor king was considered then as competent, nor to do any other act to which the minor was considered as competent. In the 4th and 6th year of his reign, the minor not only summoned, but personally held the parliament, and yet the protectoral authority remained. The council, which is said to have limited the power of the protector, was a council to the king, and not to the protector; of which council the protector was president, and, in augmentation, not controul of his authority. Parliament, not a convention, directed the council, amongst other things, “ in such matters that the king had been accustomed to be *conseilled* with; that then the said lordes procede not ther ynnе with-
 “ onte the *advise* of the lordys of Bedford
 “ or Glocester.” Vide rolls of parliament, vol. iv. p. 176. So that, so far from being
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limited by this council, he has the authority of the king given him in council. The author, through all his false statements, endeavours to blend and confuse the two offices of Regent and Protector, as equally limited in power and authority. The fact is not true, as appears from the rolls of parliament in the reigns of Edward III. and Henry V. Frequent appointments appear of a *custos regni*, with full Regal power. In the 5th of Edward III. John of Eltham, Earl of Cornwall, was appointed *Custos Regni*. In the 12th of Edward III. during his absence in Flanders, Edward, duke of Cornwall, afterwards prince of Wales, was appointed *Custos Regni*, with full Regal authority; he disposed of offices, &c. summoned and held parliament, and commissions run in the king's name, and that of the lord warden of England. In Henry the Vth's reign, the duke of Bedford, and the duke of Gloucester, were, at different times, Regent, with royal authority, during the king's absence; they summoned and held parliaments, and did every other Regal act.

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The parliament summoned by them was, *ipso facto*, dissolved by the return of the king ; to prevent which, an act still remains on our statute book of the 8th of Henry V. During his tender age, the king was deemed capable of doing many acts, therefore did not require a Regent to occupy the whole royal authority, but a Protector to fill up the partial defects of his royal authority. The young king could, by law, summon and hold parliaments, and actually, in person, met and held those of the 4th and 6th years of his reign ; and the Protector held, of course, a limited office, not that of Regent, nor any (as the parliament told the duke of Gloucester) " that imported the authority of governance of the land, but one that importeth personal duty." It is plain that the legislature was reckoned complete during the minority of the king ; for the duke of Gloucester is told, that he had no authority in parliament but as duke of Gloucester, the king being in parliament at years of meet discretion ; but his executive power was deem-

ed defective. In cases of absence, where the whole royal authority, of necessity, was suspended, no less than a Regent, with full royal power, was appointed. It appears also, that the right of the elder brother to any legal transfer of royal authority, was, by parliament, acknowledged in the person of the duke of Bedford, against the will of Henry V. and the claim of the younger brother.

The two precedents referred to during the disorder of Henry VI. cannot be relied on. The first preceded the battle of St. Albans, a few months; and the other followed the victory and the capture of the king: but even in the protectorate of the duke of York, he is declared, saving the right of the prince of Wales, then six months old, in the terms of the roll, vol. v. p. 242, "so that it be not prejudice to my lord the prince." But I shall not dwell on precedents in a civil war, which ended by the dethroning and murder of the king, and the restoration of the elder line of York. The author having mistated all these precedents,

dents, proceeds to say, that it is the indispensable duty of parliament to allow no degree of authority to be exercised which shall be incompatible with the maintaining the king in the possession of his rights, and enabling him to re-assume the exercise of them whenever his health shall allow it. This jargon is so unintelligible, and so unaccompanied with any statement of the specific authority he thinks would have this effect, that it is difficult to form any other judgment of it, but that a similar jargon might, with equal reason, be uttered to parliament with the king on the throne; that it was the duty of parliament to prevent any degree of authority being exercised that shall be incompatible with maintaining the lineal succession to the crown, and the full reversionary right of the heir apparent. Whatever are the duties of parliament, when we have got one, I hope and trust they will perform; but nothing a convention can do, can bind a parliament even to their duty, nor the meanest subject of the realm; a convention cannot abridge or alter the

rights of the crown, though they can pronounce sentence of forfeiture on the owner, without whom no parliament can act ; they cannot alter the constitution, though they can fill a vacant throne, during the vacancy of which no parliament can act ; but no act which parliament can do, is a convention capable of doing. There is, in the present case, no pretence to say the throne is vacant ; the rights of the king, therefore, remain unimpeached and secured by all the weight and force of the laws, and will be by the weight and authority and affection of every future parliament. Nothing that parliament can do, much less a convention, can add any thing to secure allegiance to the king ; can give him better hold on the love and affection of his subjects than he already has, or remove the fear of treason further from him. The exercise of royal authority, by the heir apparent, cannot take away the king's right no more than the exercise of royal authority by the king can endanger the future rights of the heir apparent.

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Whatever authority the public good does not require in the hands of a Regent, is too much in the hands of the king; I know but one alarming Regency, which is that of ambitious ministers voting themselves in power, or one hampered in its authority, by men, ambitious, finding an interest in weakening the accustomed powers of government. No heir apparent ever exercised the limited authority of a protector; nothing short of the authority of Regent ever was held by an heir apparent. The king, in full enjoyment of his faculties, may possibly himself, certainly with concurrence of parliament, appoint any other person or persons to execute the office of Regent, but the law prefers no person before the heir apparent; who has the same right of preference which the duke of Bedford had over his brother. The office of Regent is not a limited office, it is a complete *locum tenens*; by which name it is sometimes called. It appears by the answer of parliament, to the duke of Gloucester, (who having been in the preceding reign, Regent; could not
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digest the more limited authority of Protector, and enquires into the extent of his authority) that he was Protector, and not Lieutenant Governor or Regent, nor any name that imported the government of the land. Vide Rolls, Vol. v. p. 326. and, therefore, they pray, exhort, and require him to content himself with the power aforesaid; and it appears by this answer, that the authority of Regent would not have been so limited. If, therefore, the office of Regent is known to the constitution, as it certainly is, if alone, it fills the whole space of the throne, without assuming the crown, during the absence of the King, and without impeaching his return, what authority, in point of policy, is so adapted to the present occasion? If, on the other hand, a set of designing men, for their own views, wish to make the office elective, and liable to limitation, will they find themselves supported by any persons, who must foresee, that Ireland may *elect* for itself, and fill the office with a different Regent with different limitations; if the Regency devolves
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of right, it covers equally the three united kingdoms; who will venture to assert, that, by the Union, the people of Scotland gave up their right of changing their government to a convention of two estates; by what clause of the Union are the sixteen peers alone to meet in convention, when necessity forces an election of a third estate? Certainly, the author of the Pamphlet will not contend with me, that it does not devolve to the people, for he affirms it does. I trust, therefore, it will appear manifest, not only that the Heir Apparent is of right sole Regent, with full royal authority, during the incapacity of the king, to act for himself; and that it is sound policy, as well as law, that it should be so; and that no convention has, or can have power, to change, alter, or abridge the royal authority, which presides over the country; though they must, when necessity compels, change the person, in whom, by the law of the land, it integrally resides for the good of the people.

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